STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DARNELL MCCRAY,

Defendant-Appellant.

UNPUBLISHED
February 6, 1998

No. 192520
Lenawee Circuit Court
LC No. 94-006155-FH

Before: Michael J. Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant was found guilty by a jury of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and thereafter pleaded guilty to habitual offender-second, MCL 769.10; MSA 28.1082. He was sentenced to five to thirty years' imprisonment, and now appeals as of right. We affirm.

Defendant first contends that the trial court erred in admitting, over objection, evidence of other crimes. Specifically, a witness was permitted to testify that the defendant was owed money for drugs. The evidence was presumably offered and admitted pursuant to MRE 404(b)(1), although that is not clear from the record. Such evidence was highly probative of the issue of intent and its prejudicial effect did not substantially outweigh its probative value. *People v Mouat,* 194 Mich App 482, 485; 487 NW2d 494 (1992). Therefore, the trial court did not abuse its discretion in admitting the evidence. *People v Sawyer,* 222 Mich App 1, 5; 564 NW2d 62 (1997). Although the prosecutor failed to give the requisite notice of her intent to offer such evidence as required under *People v VanderVliet*, 444 Mich 52, 89; 508 NW2d 114 (1993), and MRE 404(b)(2), defendant did not object to the lack of notice until the prosecutor elicited the same testimony from a subsequent witness. Given that plus the fact that the evidence was relevant and not more prejudicial than probative, that it was not raised in closing argument, and that defendant did not request a limiting instruction regarding the use of such evidence, we cannot find that the lack of notice is grounds for a new trial. Compare *People v Ullah,* 216 Mich App 669, 676; 550 NW2d 568 (1996).

Defendant next contends that the trial court erred in modifying CJI2d 5.4. A coefendant admitted that he had been charged along with defendant and that he agreed to plead guilty and testify against defendant in exchange for the dismissal of another, presumably unrelated controlled substance charge pending against him. The trial court modified subsection (1)(c) to state that the codefendant had been promised that he would not be prosecuted for another offense, as opposed to the instant offense, but erroneously retained the language "the defendant is charged with committing." Inasmuch as defendant did not object to the instruction and it did not pertain to a basic and controlling issue in the case, our failure to review the issue will not result in manifest injustice. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). To the extent defendant claims he was deprived of effective assistance of counsel, he has failed to preserve the issue by raising it in the statement of questions involved on appeal. *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995).

Affirmed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ Roman S. Gribbs